House Finance, Ways, and Means Subcommittee Am. #1

Amendment No._____

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Signature of Sponsor

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____
_____

AMEND Senate Bill No. 2188 **House Bill No. 2255***

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 54-17-108, is amended by deleting the section and substituting instead the following:

54-17-108. Advertising or junkyards prohibited on scenic highways -- Authority of commissioner to acquire.

(a) Whenever a road or highway has been designated part of the system, it is unlawful for any person to construct, use, operate, or maintain any outdoor advertising device, as defined in § 54-21-102, or junkyard within two thousand feet (2,000') of any road or highway that is a designated part of the system and that is located either outside the corporate limits of any city or town or at any place within a tourist resort county, as defined in § 42-1-301.

(b) The commissioner is authorized to acquire the advertising structure or junkyard by purchase, gift, or condemnation, and to pay just compensation for the removal of these structures and junkyards.

(c) Any outdoor advertising device, as defined in § 54-21-102, lawfully in existence prior to the designation of the scenic byway, upon designation, is able to be maintained, repaired, reconstructed, or constructed according to the original application for the outdoor advertising permit.

SECTION 2. Tennessee Code Annotated, Section 54-17-109, is amended by deleting the section.

SECTION 3. Tennessee Code Annotated, Title 54, Chapter 17, Part 1, is amended by adding the following as a new section:

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are declared to be severable.

SECTION 4. Tennessee Code Annotated, Section 54-17-205, is amended by deleting the section and substituting instead the following:

54-17-205. Existing outdoor advertising structures.

(a) Whenever a road or highway has been designated part of the Tennessee parkway system, it is unlawful for any person to construct, use, operate, or maintain any outdoor advertising device, as defined in § 54-21-102 or junkyard within two thousand feet (2,000') of any road or highway that is a designated part of the system and that is located either outside the corporate limits of any city or town or at any place within a tourist resort county, as defined in § 42-1-301.

(b) The commissioner is authorized to acquire the advertising structure or junkyard by purchase, gift, or condemnation, and to pay just compensation for the removal of these structures and junkyards.

(c) These structures are able to be maintained, repaired, reconstructed, or constructed according to the original application for the outdoor advertising permit.

SECTION 5. Tennessee Code Annotated, Section 54-17-206, is amended by deleting the section and substituting instead the following:

54-17-206. Advertising structures, junkyards, and trash dumping.

(a) The provisions of the Scenic Highway System Act of 1971, compiled in part 1 of this chapter, regarding advertising structures, junkyards, and trash dumping applies to the Tennessee parkway system. If a conflict exists between this part and part 1 of this chapter regarding advertising structures, junkyards, and trash dumping, due to a road

having been designated as being on both the scenic highway system pursuant to part 1 of this chapter and the parkway system pursuant to this part, then part 1 of this chapter shall prevail. It is the intent of the general assembly that nothing contained in this subsection (a) shall be construed as having any retroactive force or taking away any vested right or be applied to any contractual obligation.

(b) Subsection (a) shall not apply to those parts of the system lying within any comprehensively zoned area, unless otherwise provided by the zoning regulations and within one-half (1/2) mile of any section of the parkway system where it crosses an interstate highway system.

SECTION 6. Tennessee Code Annotated, Title 54, Chapter 17, Part 2, is amended by adding the following as a new section:

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are declared to be severable.

SECTION 7. Tennessee Code Annotated, Title 54, Chapter 21, is amended by deleting the chapter in its entirety and substituting instead the following:

54-21-101. Short title.

This chapter shall be known and may be cited as the "Outdoor Advertising Control Act of 2020."

54-21-102. Chapter definitions.

As used in this chapter:

(1) "Adjacent area" means that area within six hundred sixty feet (660') of the nearest edge of the right-of-way of interstate and primary highways and visible from the main traveled way of the interstate or primary highways;

(2) "Changeable message sign" means an outdoor advertising device that displays a series of messages at intervals by means of digital display or mechanical rotating panels;

(3) "Commissioner" means the commissioner of transportation or the commissioner's designee;

(4) "Compensation" means the exchange of anything of value, including money, securities, real property interests, personal property interests, goods or services, promise of future payment, or forbearance of debt;

(5) "Conforming" means an outdoor advertising device that was permitted under and conforms to the zoning, size, lighting, and spacing criteria established in accordance with either the current agreement entered into between the commissioner and the secretary of transportation of the United States on or about October 18, 1984, or the original agreement entered into on or about November 11, 1971, as authorized in § 54-21-113. Any permitted outdoor advertising device that continues to conform to either the current agreement or the original agreement and conditions provided in § 54-21-113 is considered conforming;

(6) "Customary maintenance" means maintenance of a nonconforming outdoor advertising device, which may include, but shall not exceed, the replacement of the sign face and stringers in like materials, and the replacement in like materials of up to fifty percent (50%) of the device's poles, posts, or other support structures; provided, that the replacement of any poles, posts, or other support structures is limited to one (1) time within a twenty-four-month period;

(7) "Department" means the department of transportation;

(8) "Destroyed" means, with respect to a nonconforming outdoor advertising device, that, in the case of wooden sign structures, sixty percent (60%) or more of the upright supports of a sign structure are physically damaged

such that normal repair practices would call for replacement of the broken supports or, in the case of metal sign structures, replacement of at least thirty percent (30%) of the length above ground of each broken, bent, or twisted support;

(9) "Digital display" means a type of changeable message sign that displays a series of messages at intervals through the electronic coding of lights or light emitting diodes or any other means that does not use or require mechanical rotating panels;

(10) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish, but does not apply to changes of copy treatment on an existing outdoor advertising device;

(11) "Facility" means a building with functioning utility services that has regular hours of operation on a year-round basis;

(12) "Information center" means an area or site established and maintained at a safety rest area for the purpose of informing the public of places of interest within this state and providing other information the commissioner may consider desirable;

(13) "Interstate system" means that portion of the national system of interstate and defense highways, located within this state, as officially designated, or as may hereafter be designated, by the commissioner, and approved by the secretary of transportation of the United States, pursuant to title 23 of the United States Code;

(14) "Main traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main

traveled way. "Main traveled way" does not include such facilities as frontage roads, turning roadways, or parking areas;

(15) "Nonconforming" means an outdoor advertising device that does not conform to the zoning, size, lighting, or spacing criteria established by and in accordance with either the current agreement entered into between the commissioner and the secretary of transportation of the United States, or in accordance with the original agreement entered into on or about November 11, 1971, as authorized in § 54-21-113. Any outdoor advertising device that continues to conform to either the current agreement or the original agreement as provided in § 54-21-113 shall not be considered nonconforming;

(16) "Outdoor advertising device" means a sign that is:

(A) Operated or owned by a person or entity that is earning compensation directly or indirectly from a third party or parties for the placement of a message on the sign; or

(B) A sign located on a facility's parcel owned or operated for the primary purpose of displaying a sign for purposes set forth in subdivision (16)(A);

(17) "Person" means and includes an individual, a partnership, an association, a corporation, or other entity;

(18) "Primary system" means that portion of connected main highways, located within this state, as officially designated, or as may hereafter be designated by the commissioner, and approved by the secretary of transportation of the United States, pursuant to title 23 of the United States Code, including highways designated as part of the national highway system and highways formerly designated as part of the federal-aid primary system;

(19) "Safety rest area" means an area or site established and maintained within or adjacent to the right-of-way by or under public supervision or control, for the convenience of the traveling public;

(20) "Sign" means an outdoor sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform any part of the advertising or informative contents of which is visible from any place on the main traveled way of an interstate system or primary system;

(21) "State system" means that portion of highways located within this state, as officially designated, or as may hereafter be designated by the commissioner;

(22) "Traveled way" means the portion of a roadway for the movement of vehicles, exclusive of shoulders;

(23) "Utility signs" means warning signs, notices, or markers that are customarily erected and maintained for operational and public safety purposes by publicly or privately owned utilities, railroads, ferries, airports, or other entities that provide utility or transportation services; and

(24) "Visible" means capable of being seen, whether or not readable, without visual aid by a person of normal visual acuity.

54-21-103. Restrictions on outdoor advertising devices on interstate and primary highways.

An outdoor advertising device shall not be erected or maintained within six hundred sixty feet (660') of the nearest edge of the right-of-way and visible from the main traveled way of the interstate or primary highway systems in this state except the following:

(1) Directional or other official signs and notices authorized or required by law;

(2) Signs, displays, and devices other than outdoor advertising devices;

(3) Outdoor advertising devices located in areas that are zoned industrial or commercial under authority of local government law and whose size, lighting, and spacing are consistent with customary use as determined by agreement between the state and the secretary of transportation of the United States;

(4) Outdoor advertising devices located in unzoned commercial or industrial areas as may be determined by agreement between the state and the secretary of transportation of the United States;

(5) Landmark signs lawfully in existence on October 22, 1965, as authorized under 23 U.S.C. § 131 and 23 CFR 750.710; and

(6) Utility signs.

54-21-104. Permits and tags -- Fees.

(a)

(1) Unless otherwise provided in this chapter, a person shall not construct, erect, operate, use, maintain, or cause or permit to be constructed, erected, operated, used, or maintained, any outdoor advertising device within six hundred sixty feet (660') of the nearest edge of the right-of-way and visible from the main traveled way of the interstate or primary highway systems without first obtaining from the commissioner a permit and tag.

(2) If an existing outdoor advertising device was not subject to this chapter when it was erected but is subsequently made subject to this chapter by a federal law or action that adds a highway or section of a highway to the interstate or primary highway systems, such outdoor advertising device is required to obtain a permit and tag from the commissioner as provided in subdivision (b)(2).

(3) An outdoor advertising device erected within six hundred sixty feet (660') of the nearest edge of the right-of-way and visible from the main traveled

way of the interstate or primary highway systems between September 11, 2019, and the effective date of this act, is deemed legal conforming or legal nonconforming and is required to obtain a permit and tag from the department as provided in subdivision (b)(2).

(4) Outdoor advertising devices that were permitted under the Billboard Regulation and Control Act of 1972, compiled in this chapter as it existed prior to the effective date of this act, shall be assigned the same permit number that was given under that act.

(b)

(1) Except as otherwise provided in subdivision (b)(2), permits and tags shall not be issued until applications are made in accordance with and on forms provided by the commissioner and accompanied by payment of a fee of two hundred dollars ($200) for each permit and tag requested. This fee represents payment for the required tag and for the first annual permit and is not subject to return upon rejection of any application. The commissioner shall use best efforts to process an application for a permit, in accordance with the rules of the department, within no greater than sixty (60) days after a completed application is received. If the application is incomplete or defective on its face, the commissioner shall notify an applicant in writing no later than fifteen (15) days of receipt of the filed application of its incomplete or defective status, and indicate the information or documentation that is needed to complete or correct the application. If a decision either to issue or deny the permit cannot be made within sixty (60) days after receipt of the completed or corrected application, the commissioner shall contact the applicant prior to the expiration of the sixty (60) days to provide an explanation of the reasons why additional time is needed to process the application.

(2) If an existing outdoor advertising device is made subject to this chapter under subdivision (a)(2) or (a)(3) or if an existing outdoor advertising device that was subject to this chapter when it was erected but is subsequently modified from its original permitted state as provided in subdivision (a)(2), the owner or operator of the outdoor advertising device shall obtain a permit and tag in the same manner as provided in subdivision (b)(1) except as follows:

(A) The application for the permit and tag must be made on an application form specifically provided for this purpose;

(B) The application form must exempt the applicant from providing:

(i) Any stake or mark on the ground showing the location of the outdoor advertising device on the real property;

(ii) A map or scaled drawing showing the property lines of the real property within which the outdoor advertising device is located, the location of the outdoor advertising device within the real property, the public roads adjacent to the real property, or the means of access to the outdoor advertising device; or

(iii) Any affidavit or other document from the real property owner verifying that the owner has granted the applicant the right to construct and operate the outdoor advertising device on the real property;

(C) The application must be accompanied by payment of a fee of seventy dollars ($70.00) for each permit and tag requested. This fee represents payment for the required tag and for the first annual permit and is not subject to return upon rejection of any application;

(D) After a completed application is submitted to and processed by the department in accordance with this subdivision (b)(2) and the

applicable provisions of the department's outdoor advertising device regulations, the department shall issue the permit, except as otherwise provided in subdivision (b)(2)(F);

(E) The department shall not deny a permit for an existing outdoor advertising device under this subdivision (b)(2) solely because the outdoor advertising device does not meet the size, lighting, spacing, or zoning criteria that are required for new outdoor advertising devices under current law and regulations;

(F)

(i) An application for a permit may be denied on other grounds under this subdivision (b)(2) only in accordance with current law or regulations, including as follows:

(*a*) The outdoor advertising device is located within or encroaches upon state highway right-of-way;

(*b*) There is no access to the outdoor advertising device for maintenance or operational purposes except by direct access from state highway right-of-way or across the state's access control limits;

(*c*) The applicant for the permit is subject to enforcement action under § 54-21-105(c); or

(*d*) Issuance of the permit would violate federal law;

(ii) Before denying a permit on any of the grounds provided in subdivision (b)(2)(F)(i), the department shall notify the applicant in writing of the violation that prevents issuance of the permit. The department shall also give the applicant a reasonable amount of time to undertake such action, if any, that would cure

the violation. If the applicant cures the violation, the department shall issue the permit, but if the applicant fails to cure the violation, the department shall deny the permit;

(G) Any permit that is issued under this subdivision (b)(2) must indicate whether the outdoor advertising device is characterized and regulated as a conforming or nonconforming device under this chapter based upon the conditions and laws in effect on the date of the department's field inspection. The department shall notify the applicant in writing of the reason or reasons for characterizing a device as nonconforming; and

(H) The applicant has the right to appeal the department's decision in accordance with the department's outdoor advertising device rules and the applicable provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(3) An application for an addendum to an existing permit requesting authorization to upgrade an existing outdoor advertising device to a changeable message sign with a digital display, as provided in § 54-21-119, must also be accompanied by payment of a fee of two hundred dollars ($200), which is not subject to return upon rejection of the application. Neither the application for an addendum nor the payment of the two-hundred-dollar fee is required for an outdoor advertising device authorized by a valid permit from the department that was effective on September 10, 2019, and has been upgraded to a changeable message sign with a digital display between September 11, 2019, and the effective date of this act.

(4) For the purposes of issuing permits and regulating outdoor advertising devices in accordance with this chapter, the location of a permitted outdoor advertising device is determined by the location of the supporting

monopole, or by the location of the supporting pole nearest to the highway in the case of a device erected on multiple supporting poles; provided, however, that where a permitted multiple-pole device may be lawfully reconstructed, the replacement of the supporting poles with a monopole is not considered a change of location requiring a new permit if:

(A) The permittee gives advance notice to, and receives the prior approval of, the department before reconstructing the outdoor advertising device;

(B) The monopole is erected within the line segment defined by the previous supporting poles; and

(C) The location of the monopole meets applicable spacing requirements.

(5) Any advertising structure existing along the parkway system by and for the sole benefit of a nonprofit organization exempt from federal income tax under 26 U.S.C. § 501(c)(3) is exempt from the payment of fees for permits or tags under this subsection (b).

(c)

(1) All tags issued are permanent; however, permits must be renewed annually between November 1 and December 31, and the commissioner shall charge the sum of seventy dollars ($70.00) for 2021 and thereafter for annual renewal of each permit. A valid permit that was effective on September 10, 2019, shall not become invalid based on any failure to renew the permit between November 1 and December 31, 2019, and such permit shall not be subject to renewal until the renewal period occurring after the effective date of this act.

(2) In the event that a permit has not been renewed by December 31 for the following year as required by subdivision (c)(1), the permit is not considered void until the commissioner has given the permit holder notice of the failure to

renew and the opportunity to correct the unlawfulness, as provided in § 54-21-105(b). The department must send the notice of the failure to renew within sixty (60) days after the failure to renew. The failure to renew may be remedied by submitting a late renewal form and paying the annual permit renewal fee together with a late fee, in the total amount of two hundred dollars ($200), within thirty (30) days of receipt of the notice. If a permit holder fails to renew the permit within this thirty-day notice period, then the permit is void and the outdoor advertising device is considered unlawful and subject to removal as further provided in § 54-21-105. The notice given by the commissioner must include the requirements for renewal and consequences of failure to renew as provided by this subdivision (c)(2). Any permit that has not been renewed within one hundred twenty (120) days after the failure to renew is void. After the permit is voided and upon payment of all accrued, delinquent renewal fees, the commissioner shall reinstate a voided permit. Where a permit is void for failure to renew, it shall be renewed on submission by the owner of accrued fees, if any, and a permit application. The permit application shall include the name and address of the owner of the outdoor advertising device, the name and address of the property owner, and the location of the device.

(d) For each permit issued, the commissioner shall deliver to the applicant a serially numbered permit tag, which must be attached on the outdoor advertising device in a manner as to be visible from the main traveled way of the interstate or primary highway. If more than one (1) side of any structure is used for an outdoor advertising device, a permit and tag is required for each side. Any outdoor advertising device sculptured in the round is considered to have three (3) sides.

(e) For each replacement tag issued, the commissioner shall deliver to the applicant a serially numbered permit tag. The cost of this replacement tag is twenty-five dollars ($25.00), payable at the time of request.

(f) Whenever it becomes necessary to transfer a permit from one (1) permit holder to another, the department shall charge a transfer fee of ten dollars ($10.00) to the permit holder of record.

54-21-105. Failure to comply with § 54-21-104 -- Effect.

(a)

(1) Any owner of any outdoor advertising device who has failed to act in accordance with § 54-21-104 must remove the outdoor advertising device immediately.

(2) Failure to remove the outdoor advertising device renders the outdoor advertising device a public nuisance and subject to immediate disposal, removal, or destruction.

(3) In addition, the commissioner has the authority to assess and collect from the owner a civil penalty in the amount of five hundred dollars ($500) for each calendar day after the date that the owner is determined through a contested case hearing to have failed to act in accordance with § 54-21-104. The total amount of the civil penalty imposed each year must not exceed ten thousand dollars ($10,000).

(4) In addition, or in lieu of subdivisions (a)(1)-(3), the commissioner may enter upon any property on which an outdoor advertising device is located and dispose of, remove, or destroy the outdoor advertising device, all without incurring any liability for those actions.

(b) Prior to invoking this section, the commissioner shall give notice either by certified mail or by personal service to the owner of the outdoor advertising device or occupant of the land on which the outdoor advertising device is located. The notice must specify the basis for the alleged unlawfulness, the remedial action that is required to correct the unlawfulness, the opportunity to request a contested case hearing in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter

5, and advise that a failure to take the remedial action or request a hearing within forty-five (45) days results in the sign being subject to removal. For good cause shown, the commissioner may extend the forty-five-day period for remedial action for up to an additional one hundred fifty (150) days, so long as all advertising content is removed from the unlawful outdoor advertising device within the forty-five-day period. If advertising content is placed on the outdoor advertising device during any extended period, the outdoor advertising device may be immediately removed by the commissioner without further notice. The owner of the outdoor advertising device is liable to the state for damages equal to three (3) times the cost of removal, in addition to any other applicable fees, costs, or damages, but the owner of the land on which the outdoor advertising device is located shall not be presumed to be the owner of the outdoor advertising device simply because it is on the owner's property.

(c)

(1) If the department has reason to believe that a sign is being operated, in whole or part, as an outdoor advertising device without first obtaining a permit as required under § 54-21-104, the department may issue an investigative request to the owner or operator of the sign, the owner of the property, or any other person for the purpose of obtaining relevant documents or information to determine whether the sign is being operated as an outdoor advertising device.

(2) If, after being served with an investigative request by the department under subdivision (c)(1), the person provides the requested documents or information and the department determines that the sign is being operated as an outdoor advertising device in violation of §§ 54-21-103 and 54-21-104, the department shall issue a written order to the owner or operator of the outdoor advertising device explaining the basis for determining that the sign is an outdoor advertising device and directing the owner or operator of the device to remedy the violation by applying for the applicable outdoor advertising device permit, or

by removing the unlawful device, as appropriate, by the date set forth in the order, which shall be no less than sixty (60) days after the date of the order.

(3) The person may appeal the department's order under subdivision (c)(2) by filing a written notice of appeal with the department within thirty (30) days of the date on which the order is issued. If an appeal is timely filed with the department, the department shall initiate a contested case proceeding under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to hear the person's appeal.

(4) If a person fails to comply with the department's investigative request under subdivision (c)(1), or if the department reasonably believes the documents or information provided are incomplete or inaccurate, the department may initiate a contested case proceeding under the Uniform Administrative Procedures Act to compel the production of relevant documents or information and to determine whether the outdoor advertising device is being operated in violation of §§ 54-21-103 and 54-21-104 and therefore subject to enforcement action under § 54-21-105.

54-21-106. Disposition of fees.

All fees received by the commissioner under § 54-21-104 must be paid into the state treasury and placed in the highway fund for the administration of this chapter, and any fees received in excess of those administration costs shall be allocated to the department's general fund.

54-21-107. Acquisition by commissioner of outdoor advertising devices along the interstate and primary highway systems.

(a) The commissioner is authorized to acquire by purchase, gift, or condemnation, and to pay just compensation upon the removal of the following outdoor advertising devices in areas adjacent to the interstate and primary highway systems:

(1) Those lawfully in existence on April 4, 1972; and

(2) Those lawfully erected on or after April 4, 1972.

(b)

(1) Compensation is authorized to be made only for the following:

(A) The taking from the owner of the outdoor advertising device of all right, title, leasehold, and interest in the outdoor advertising device; and

(B) The taking from the owner of the real property on which the outdoor advertising device is located, of the right to erect and maintain the outdoor advertising device on the property.

(2) If funds other than federal funds are used, the state shall follow the following order of purchasing priorities:

(A) Volunteer nonconforming outdoor advertising devices;

(B) Hardship situations;

(C) Normal value signs;

(D) Signs in areas that are designated scenic or parkway;

(E) Product advertising on:

(i) Rural interstate;

(ii) Rural primary; and

(iii) Urban areas;

(F) Non-tourist-oriented directional advertising; and

(G) Tourist-oriented devices.

(3) All funds other than federal funds, acquired by the state from whatever source for the purpose of acquiring nonconforming outdoor advertising devices, must be appropriated by the general assembly to the department and shall not be earmarked for acquisitions at any particular location.

(4) Funds obtained from private sources not appropriated within one (1) year revert to the donor.

(5) Upon funds being made available, owners of outdoor advertising device must be notified of the availability of the funds for the purpose of volunteering nonconforming outdoor advertising devices for purchase by the state.

(c) Upon the request of the commissioner, the owner of the outdoor advertising devices and the owner of the property upon which the outdoor advertising device is located who are seeking compensation as provided under subdivisions (b)(1)(A) and (B) shall present evidence satisfactory to the commissioner that the outdoor advertising device in question was in existence or lawfully erected, as the case may be, on, before, or after the appropriate dates set out in subdivisions (a)(1) and (2). Except by court order, the commissioner shall not make any payment under subdivisions (b)(1)(A) and (B) until the proof has been presented. Notwithstanding this chapter, those outdoor advertising devices legally in existence on April 4, 1972, are entitled to remain in place and in use until compensation for removal has been made as provided in this section.

(d) In determining whether any outdoor advertising device is lawful or unlawful, any failure to have obtained a license or permit, or to have attached a permit, or failure to have complied with setback requirements is not a cause for declaring any outdoor advertising device unlawful. Any person having constructed, erected, operated, used, maintained, or having caused or permitted any outdoor advertising device to be constructed, erected, operated, used, or maintained, shall pay the fee prescribed by § 54-21-104; provided, that the outdoor advertising device was erected prior to April 4, 1972.

54-21-108. Restrictions on outdoor advertising devices adjacent to state highways.

(a) Control of outdoor advertising devices is extended to outdoor advertising devices located beyond six hundred sixty feet (660') of the edge of the right-of-way of the federal-aid interstate or primary systems outside of urban areas erected with the

purpose of their message being read from the main traveled ways of the systems. The outdoor advertising devices are prohibited, regardless of whether located in commercial or industrial areas, unless they are of a class or type allowed under existing law within six hundred sixty feet (660') of the edge of the right-of-way of the systems outside of commercial or industrial areas.

(b) Those outdoor advertising signs, displays, or devices lawfully erected prior to July 1, 1976, but prohibited as of July 1, 1976, by subsection (a) shall be removed upon the payment of just compensation in the same manner and subject to the same limitations as signs lawfully erected within six hundred sixty feet (660') of the edge of the right-of-way of the federal-aid interstate and primary systems outside of commercial and industrial areas.

(c) Signs lawfully in existence on October 22, 1965, determined by the commissioner, subject to the concurrence of the secretary of transportation of the United States, to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance, the preservation of which would be consistent with the purposes of this section, are not required to be removed.

54-21-109. Damage, destruction, or removal of signs or markers on state highway system.

A person shall not affix any outdoor advertising device on any sign erected under the authority of the department, or on any right-of-way of any state highway.

54-21-110. Information for traveling public.

In order to provide information in the specific interest of the traveling public, the commissioner is authorized to maintain maps and to permit informational directories and advertising pamphlets to be made available at safety rest areas for the purpose of informing the public of places of interest within the state and providing other information considered desirable.

54-21-111. Power of commissioner to enforce provisions; rulemaking.

The commissioner is given authority to and shall, within sixty (60) days of the effective date of this act, begin promulgating and enforcing only those rules as necessary to carry out this chapter and 23 U.S.C. § 131; provided, that the commissioner by rule shall establish procedures for accepting and resolving written complaints related to signs that are subject to this chapter. The rules must include:

(1) A process to make information available describing the department's procedures for complaint investigation and resolution, including making information about the procedures available on the department's website;

(2) A system to prioritize complaints so that the most serious complaints receive attention before less serious complaints; and

(3) A procedure for compiling and reporting detailed annual statistics about complaints.

54-21-112. Commissioner's authority to enter on property without penalty.

The commissioner and all employees under the commissioner's direction, in the performance of their functions and duties under this chapter, may enter into and upon any property, without penalty, upon which an outdoor advertising device is located and make examinations and surveys as may be relevant or dispose of the outdoor advertising device when disposal is provided for under this chapter.

54-21-113. Commissioner's authority to enter into agreement with secretary of transportation.

(a) The commissioner is authorized and directed to enter into agreements with the secretary of transportation of the United States regarding the definition of unzoned industrial and commercial areas; and regarding the size, lighting, and spacing of outdoor advertising devices that may be erected and maintained within six hundred sixty feet (660') of the nearest edge of the right-of-way within the areas adjacent to the interstate and primary systems that are zoned industrial or commercial under the authority of state or local law, or in unzoned industrial or commercial areas that may be permitted in

accordance with the terms of the agreement between the commissioner and the secretary of transportation of the United States. In any agreement entered into with the secretary of transportation, the commissioner reserves the right to renegotiate or make whatever modifications are necessary to conform to any subsequent amendments to the federal Highway Beautification Act of 1965, compiled in 23 U.S.C. §§ 131, 136, and 319. Any modification of the agreement with the United States department of transportation that the commissioner signed on or about November 11, 1971, or any subsequent agreement becomes effective only upon passage of an act authorizing the modification by the general assembly.

(b) The commissioner is authorized to execute a modification of the agreement signed on or about November 11, 1971, to change the maximum area for any one (1) outdoor advertising device from one thousand two hundred square feet (1,200 sq. ft.) to seven hundred seventy-five square feet (775 sq. ft.); to reduce the optional maximum square footage of outdoor advertising devices authorized in counties having a population greater than two hundred fifty thousand (250,000) from three thousand square feet (3,000 sq. ft.) to one thousand two hundred square feet (1,200 sq. ft.); to modify the agreement to change the minimum spacing of outdoor advertising devices on the interstate system and controlled access highways on the primary system from five hundred feet (500') to one thousand feet (1,000') where the same are not separated by buildings or other obstructions, so that only one (1) outdoor advertising device is visible from the highway at any one (1) time; to change the minimum spacing on noncontrolled access highways on the primary system outside the corporate limits of a municipality from three hundred feet (300') to five hundred feet (500'); and to change the minimum distance from an interchange, or intersection at grade, on the interstate system or controlled access highways on the primary system, outside incorporated cities, from five hundred feet (500') to one thousand feet (1,000'). Inside the corporate limits of a municipality, the distance between signs remains one hundred feet (100'). Permits

issued prior to any change authorized for outdoor advertising devices or for outdoor advertising devices subsequently erected pursuant to the permit, that meet size, lighting, spacing, and zoning criteria are unaffected.

(c) The commissioner is further authorized to change the definition of an unzoned commercial or industrial area to provide that only those areas on which there is located one (1) or more permanent structures within which a commercial or an industrial business is actively conducted, and that are equipped with all customary utilities facilities and open to the public regularly or regularly used by employees of the business as their principal work station, or that, due to the nature of the business, are equipped, staffed, and accessible to the public as is customary, may be so defined.

(d)

(1) The commissioner is authorized to execute a modification of the agreement signed on or about November 11, 1971, to change the minimum distance from an interchange, or intersection, at grade, on the interstate system or controlled access highway on the primary system, outside incorporated cities, to five hundred feet (500') when the interchange or intersection is within two thousand five hundred feet (2,500') of an interchange or intersection, at grade, of a welcome station. This distance may be measured from that side of the interstate or controlled access highway on which the outdoor advertising is to be located if a determination is made by the commissioner that there exists a geographical feature or foliage in the median of the highway that would substantially block visibility of such outdoor advertising device from any lane of highway on the opposite side of the median.

(2) If the commissioner is formally notified by the appropriate federal offices of the United States department of transportation that as a result of any provision of this subsection (d), the state will lose federal funds or if a loss of federal funds occurs, then the provision is void and inoperative.

(3) If subsection (d) is found to be void and inoperative, or if notice is received from the United States department of transportation as provided in subdivision (d)(2), then any outdoor advertising device placed pursuant to this subsection (d) must be removed immediately by and at the expense of the owner. Failure to remove the outdoor advertising device renders the sign a public nuisance and § 54-21-105 applies. Nothing in this subsection (d) grants an absolute right in the placement of an outdoor advertising device or makes the state in any way liable under this subsection (d), if this subsection (d) is found in violation of any federal regulations as provided in subdivision (d)(2).

54-21-114. Exceptions.

This chapter does not apply to signs or markers identifying the location or depth of underground communications and power cables, water mains, gas transmission lines, and other utility facilities located within or without the boundary of the right-of-way of the interstate or primary highway systems in the state.

54-21-115. Outdoor advertising on certain interstate highways prohibited -- Penalty -- Exceptions.

No outdoor advertising device shall be erected or continued in use for the purpose of having its message read from the main traveled ways of Interstate 26 from State Route 1 in Sullivan County to State Route 67 in Washington County (formerly Interstate 181), except those portions within the boundaries of an incorporated municipality on March 3, 1994, Interstate 440 in Davidson County, Interstate 640 in Knox County, or the section of State Route 840 in Williamson County from State Route 246 to one (1) mile from the intersection with State Route 100. Failure to comply with this section renders the outdoor advertising device a nuisance, subject to immediate disposal, removal, or destruction and subject to the civil penalty and remedies provided in § 54-21-105. Valid permits for outdoor advertising devices located along Interstate 640 in Knox County issued prior to May 13, 1982, remain valid after May 13, 1982, and

the holders of the permits are permitted to construct, reconstruct, maintain, or repair the outdoor advertising devices according to the original application for which a permit was issued. Valid permits for outdoor advertising devices located along Interstate 26 from State Route 1 in Sullivan County to State Route 67 in Washington County (formerly Interstate 181), issued prior to March 3, 1994, remain valid after March 3, 1994, and the holders of the permits are permitted to construct, reconstruct, maintain, or repair the outdoor advertising devices according to the original application for which a permit was issued.

54-21-116. Vegetation control permits and fees.

(a)

(1) The commissioner shall issue to the owners or holders of lawfully issued outdoor advertising device permits, which definition includes those described as legal conforming, grandfathered, and nonconforming outdoor advertising devices in federal regulations, when the face of the outdoor advertising device is generally visible to occupants of vehicles from the main traveled ways of the system on the date of erection, permits to remove, block cut, and trim vegetation located on the right-of-way adjacent to the outdoor advertising device and replace the vegetation as directed, whenever the vegetation prevents clear visibility for a distance not to exceed five hundred yards (500 yds.) to occupants of vehicles using the main traveled ways of the controlled systems. Notwithstanding this chapter to the contrary, vegetation that, on the date of erection of the outdoor advertising device, blocks the view of the outdoor advertising device, in whole or in any part, for a distance not to exceed five hundred yards (500 yds.), to occupants of vehicles using the main traveled ways, is not eligible for removal under a vegetation control permit. The maximum area to be controlled shall not exceed five hundred feet (500'). The regional engineering director for the department shall issue a vegetation control permit

where all criteria are met, following submission of information specified and a nonrefundable fee of one hundred dollars ($100) for each face involved. Vegetation control permits will be issued upon payment of a fee of one hundred fifty dollars ($150) per face for supervision of the work. All fees received by the commissioner under this section shall be deposited to the highway fund for the administration of this part. Each subsequent year a maintenance permit may be purchased for fifty dollars ($50.00) to provide annual maintenance at any one (1) location that is consistent with the original vegetation control permit. Vegetation permits issued pursuant to the Billboard Regulation and Control Act of 1972, compiled in this chapter as it existed prior to the effective date of this act, shall be reinstated under this act. Alternatively, the owner of the device may apply for a new vegetation control permit, and the department shall issue the permit.

(2) No later than thirty (30) days from the effective date of this act, the commissioner shall develop and make available any forms necessary to apply for a permit and shall begin accepting and considering such applications. The commissioner shall use best efforts to process an application for a permit, in accordance with the rules of the department, within no greater than thirty (30) days after a completed application is received. If the application is incomplete or defective on its face, the commissioner shall notify an applicant in writing no later than fifteen (15) days of receipt of the filed application of its incomplete or defective status, and indicate the information or documentation that is needed to complete or correct the application. If a decision to approve or deny the application cannot be made within thirty (30) days after receipt of the completed or corrected application, the commissioner shall contact the applicant prior to the expiration of the thirty (30) days to provide an explanation of the reasons why additional time is needed to process the application. If the application is approved, the applicant shall notify the commissioner of the date on which the

applicant wishes the permit to be issued. The applicant shall complete the authorized vegetation control within the time period specified in the permit, and in any event, the applicant shall complete the vegetation control within one (1) year after the date on which the application was approved or the application approval and permit is void.

(b) One (1) vegetation control permit fee must be waived for those owners who voluntarily remove a nonconforming outdoor advertising device. If the nonconforming outdoor advertising device to be removed is not at least one hundred fifty square feet (150 sq. ft.) in size, two (2) nonconforming outdoor advertising devices must be removed to authorize waiver. The latter applies only when the outdoor advertising device around which control is to occur is larger than three hundred square feet (300 sq. ft.).

(c) This waiver shall not be used as evidence in any future eminent domain proceeding relating to nonconforming outdoor advertising devices.

(d) Notwithstanding any other law to the contrary, it is the legislative intent that issuance of permits and carrying out of the work pursuant to the permits are lawful activities and shall not be construed as violating any provision of law.

(e) The commissioner may revoke, suspend, or modify any vegetation control permit for cause, including violation of any terms or conditions of the permit.

54-21-117. Unauthorized removal, cutting, or trimming of vegetation.

(a) If, before obtaining an outdoor advertising device permit and a vegetation control permit, vegetation located on the right-of-way is removed, cut, or trimmed, and application is subsequently made for an outdoor advertising permit, then the commissioner may deny the permit.

(b) If, before applying for a vegetation control permit, vegetation located on the right-of-way is removed, cut, or trimmed in the vicinity of an outdoor advertising device, which action was reasonably calculated to afford greater visibility of the outdoor

advertising device, then the commissioner may revoke the outdoor advertising device permit or permits for the affected outdoor advertising devices.

(c) Prior to invoking this section, the commissioner or the commissioner's designee shall advise the affected outdoor advertising device permit applicant or holder, whichever is appropriate, that a preliminary determination of illegality has been made. The party so advised must be given the opportunity to request a hearing to be conducted pursuant to contested case provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, before the commissioner may make a final determination of illegality.

54-21-118. Restrictions on new outdoor advertising devices.

(a) After July 1, 2001, permits shall not be issued pursuant to this chapter for any new outdoor advertising device in which two (2) or more displays are stacked one (1) above the other. Outdoor advertising devices with two (2) or more displays stacked one (1) above the other that were legally erected on or before July 1, 2001, are unaffected by this subsection (a).

(b) The holder of a legal permit under subsection (a) may move the outdoor advertising device to a new location, if that location is otherwise eligible for a permit.

54-21-119. Changeable message signs.

(a) Changeable message signs may be double faced, back to back, or V- type signs.

(b) Changeable message signs with a digital display that meet all other requirements pursuant to this chapter are permissible subject to the following restrictions:

(1) The message display time must remain static for a minimum of eight (8) seconds with a maximum change time of two (2) seconds;

(2) Video, continuous scrolling messages, and animation are prohibited; and

(3) The minimum spacing of the changeable message signs with a digital display facing the same direction of travel on the same side of the interstate system or controlled access highways is two thousand feet (2,000'); provided, however, that an outdoor advertising device that uses only a small digital display, not to exceed one hundred square feet (100 sq. ft.) in total area, within a larger non-digital sign face is not subject to the minimum spacing requirement established in this subdivision (b)(3), or to any application for a specific digital display permit or permit addendum as established in subsections (c) and (d), or to any fee for a permit addendum as established in § 54-21-104(b).

(c) A person shall not erect, operate, use, or maintain a changeable message sign with a digital display in a new location without first obtaining a permit and tag expressly authorizing a changeable message sign with a digital display, and annually renewing the permit and tag, as provided in § 54-21-104. The department shall not require any additional permit under this subsection (c) for an outdoor advertising device with a digital display lawfully permitted, erected, and in operation prior to the effective date of this act.

(d) A person shall not erect, operate, use, or maintain a changeable message sign with a digital display in place of or as an addition to any existing permitted outdoor advertising device without first obtaining, and annually renewing with the permit, an addendum to the permit expressly authorizing a changeable message sign with a digital display in that location. The department shall not require any addendum under this subsection (d) for an outdoor advertising device with a digital display lawfully erected and in operation prior to the effective date of this act.

(e) The commissioner shall under no circumstances permit or authorize any person to erect, operate, use, or maintain a changeable message sign of any type as a replacement for or as an addition to any nonconforming outdoor advertising device or in any nonconforming location.

(f) Notwithstanding any other law to the contrary, a person who is granted a permit or an addendum to a permit authorizing a changeable message sign with a digital display in accordance with subsection (c) or (d) has up to, but no more than, twelve (12) months after the date on which the permit or addendum is granted within which to erect and begin displaying an outdoor advertising message on the changeable message sign; provided, however, that prior to the expiration of this twelve-month period, and upon making application to the commissioner and paying an additional permit fee in the amount of two hundred dollars ($200), the permit holder may obtain an additional twelve (12) months within which to erect and begin displaying an outdoor advertising message on the changeable message sign. This additional two-hundred-dollar fee is separate from any annual permit renewal fee required under § 54-21-104. If the permitted or authorized changeable message sign with a digital display is not erected and displaying a message within the required time, or as extended, the permit or addendum to the permit will be revoked and the changeable message sign with the digital display must be removed by the applicant or subject to removal by the commissioner as provided in § 54-21-105.

(g) Any application for a permit or addendum for a digital display as described in this section may be made using the form for an application for permit for an outdoor advertising device existing on the effective date of this act, until a separate form is available.

(h)

(1) All changeable message signs installed on or after July 1, 2014, must come equipped with a light-sensing device that automatically adjusts the brightness in direct correlation with ambient light conditions.

(2) The brightness of light emitted from a changeable message sign must not exceed 0.3 foot candles over ambient light levels measured at a distance of one hundred fifty feet (150') for those sign faces less than or equal to three

hundred square feet (300 sq. ft.), measured at a distance of two hundred feet (200') for those sign faces greater than three hundred square feet (300 sq. ft.) but less than or equal to three hundred eighty-five square feet (385 sq. ft.), measured at a distance of two hundred fifty feet (250') for those sign faces greater than three hundred eighty-five square feet (385 sq. ft.) and less than or equal to six hundred eighty square feet (680 sq. ft.), measured at a distance of three hundred fifty feet (350') for those sign faces greater than six hundred eighty square feet (680 sq. ft.), or subject to the measuring criteria in the applicable table set forth in subdivision (h)(4).

(3) Any measurements required pursuant to this subsection (h) must be taken from a point within the highway right-of-way at a safe distance from the edge of the traveled way, at a height above the roadway that approximates a motorist's line of sight, and as close to perpendicular to the face of the changeable message sign as practical. If perpendicular measurement is not practical, valid measurements may be taken at an angle up to forty-five (45) degrees from the center point of the sign face. If measurement shows a level above that prescribed in subdivision (h)(4), the exact calculations must be provided to the sign permit holder.

(4) In the event it is found not to be practical to measure a changeable message sign at the distances prescribed in subdivision (h)(2), a measurer may opt to measure the sign at any of the alternative measuring distances described in the applicable table set forth in this subdivision (h)(4). In the event the sign measurer chooses to measure the sign using an alternative measuring distance, the prescribed foot candle level above ambient light must not exceed the prescribed level, to be determined based on the alternative measuring distances set forth in the tables in subdivisions (h)(4)(A), (B), (C), and (D), as applicable. For any measuring distance between the alternative measuring distances set

forth in the following tables, the prescribed foot candle level above ambient light must not exceed the interpolated level derived from the following formula:

[I2 = (D2<2>/D1<2>) x I1]

Where I1 = the prescribed foot candle level above ambient light for the measuring distance listed in the tables, I2 = the derived foot candle level above ambient light for the desired measuring distance, D1 = the desired measuring distance in feet, and D2 = the alternative measuring distance in feet listed in the tables, as follows:

(A) For changeable message signs less than or equal to three hundred square feet (300 sq. ft.):

Alternative Measuring Distance:	Prescribed Foot Candle Level:
100	0.68
125	0.43
150	0.3
200	0.17
250	0.11
275	0.09
300	0.08
325	0.06
350	0.06
400	0.04

(B) For changeable message signs greater than three hundred square feet (300 sq. ft.) but less than or equal to three hundred eighty-five square feet (385 sq. ft.):

Alternative Measuring Distance:	Prescribed Foot Candle Level:
100	1.2
125	0.77

150	0.53
200	0.3
250	0.19
275	0.16
300	0.13
325	0.11
350	0.1
400	0.08

(C) For changeable message signs greater than three hundred eighty-five square feet (385 sq. ft.) but less than or equal to six hundred eighty square feet (680 sq. ft.):

Alternative Measuring Distance:	Prescribed Foot Candle Level:
100	1.88
125	1.2
150	0.83
200	0.47
250	0.3
275	0.25
300	0.21
325	0.18
350	0.15
400	0.12

(D) For changeable message signs greater than six hundred eighty square feet (680 sq. ft.):

Alternative Measuring Distance:	Prescribed Foot Candle Level:
100	3.675
125	2.35
150	1.63

200	0.92
250	0.59
275	0.49
300	0.41
325	0.35
350	0.3
400	0.23
425	0.2
450	0.18
500	0.15

(5) This subsection (h) applies to all changeable message signs located in this state operated pursuant to a permit issued by the commissioner.

54-21-120. Removal of nonconforming device that is destroyed.

A nonconforming outdoor advertising device that is destroyed is no longer permitted and must be removed, except when the outdoor advertising device is destroyed by vandalism or some other criminal or tortious act.

SECTION 8. The headings to sections in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 9. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 10. Notwithstanding any law to the contrary, if the department of transportation receives documentation from a federal agency that compliance with a provision of this act jeopardizes federal funding or grant money for the department, then the department shall promulgate emergency rules to address the area of noncompliance with the federal law

referenced in the federal agency documentation. The department shall comply with each provision of this act that does not jeopardize the federal funding or grant money. The emergency rules promulgated pursuant to this section may conflict with and take precedence over statutory provisions to effectuate the purposes of this section. The commissioner of transportation shall deliver to the executive secretary of the Tennessee code commission a copy of the documentation from the federal agency.

SECTION 11. This act shall take effect upon becoming a law, the public welfare requiring it.

House Finance, Ways, and Means Subcommittee Am. #2

Amendment No._____

_____

Signature of Sponsor

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____
_____

AMEND Senate Bill No. 1469 **House Bill No. 1175***

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 71, Chapter 5, Part 1, is amended by adding the following as a new section:

(a) The bureau of TennCare shall reimburse an ambulance service provider that provides a covered service to a TennCare recipient at a rate not less than the federal medicare program's allowable charge for participating providers. This subsection (a) applies only to covered services provided on or after the effective date of this act and prior to July 1, 2021. Any increased reimbursement expenditures resulting from the rate change under this subsection (a) must be paid from the bureau of TennCare's reserve funds.

(b) For purposes of this section, "ambulance service provider" means a public or private ground-based ambulance service that bills for transports and has a base of operations in this state.

(c) This section does not affect the Ground Ambulance Service Provider Assessment Act, compiled under part 15 of this chapter. Funds described under this section and part 15 of this chapter may not be used to fund the other.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

House Finance, Ways, and Means Subcommittee Am. #1

Amendment No._____

_____

Signature of Sponsor

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____
_____

AMEND Senate Bill No. 2182 **House Bill No. 2249***

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 67-6-102(23)(L), is amended by deleting the language "; or" and substituting instead the language ";".

SECTION 2. Tennessee Code Annotated, Section 67-6-102(23)(M), is amended by adding the language "or" after the semi-colon.

SECTION 3. Tennessee Code Annotated, Section 67-6-102(23), is amended by adding the following as a new subdivision (N):

(N) Acts as a marketplace facilitator;

SECTION 4. Tennessee Code Annotated, Section 67-6-102(77), is amended by adding the language "and every marketplace facilitator" after the language "this chapter".

SECTION 5. Tennessee Code Annotated, Section 67-6-102(78), is amended by adding the following as a new, appropriately designated subdivision:

( ) "Sale" includes any sale, as otherwise defined in this subdivision (78), made or facilitated by a marketplace facilitator;

SECTION 6. Tennessee Code Annotated, Section 67-6-102, is amended by adding the following as new, appropriately designated subdivisions:

( ) "Delivery network company" means a business entity that maintains an internet website or mobile application used to facilitate delivery services for the sale of local products;

( ) "Delivery services" means the pickup of one (1) or more local products from a local merchant and delivery of the local products to a customer. "Delivery services" do

not include any delivery requiring over fifty (50) miles of travel from the local merchant to the customer;

( ) "Local merchant" means a third-party merchant, including, but not limited to, a kitchen, restaurant, grocery store, retail store, convenience store, or business of another type, that is not under common ownership or control with the delivery network company;

( ) "Marketplace" means a physical or electronic place, platform, or forum, including, but not limited to, a store, booth, internet website, catalog, or dedicated sales software application, where tangible personal property or any of the things or services taxable under this chapter are offered for sale;

( ) "Marketplace facilitator":

(A) Means a person, including any affiliate of the person, that:

(i) For consideration, regardless of whether characterized as fees from the transaction, contracts, or otherwise agrees with a marketplace seller to facilitate the sale of the marketplace seller's tangible personal property or things or services taxable under this chapter through a physical or electronic marketplace operated, owned, or otherwise controlled by the person or the person's affiliate; and

(ii) Either directly or indirectly through contracts, agreements, or other arrangements with third parties, collects the payment from the purchaser of the marketplace seller's tangible personal property or things or services taxable under this chapter and transmits payment to the marketplace seller; and

(B) Does not include:

(i) A person who exclusively provides advertising services, including listing products for sale, so long as the person does not also engage directly or indirectly through one (1) or more affiliated persons in

those activities described in subdivision ( )(A) that are unrelated to advertising services;

(ii) A person whose activity with respect to marketplace sales is limited to providing payment processing services between two (2) or more parties; or

(iii) A derivatives clearing organization, designated contract market, or foreign board of trade or swap execution facility that is registered with the Commodity Futures Trading Commission ("CFTC registered platforms"), or any clearing members, futures commission merchants, or brokers using the services of CFTC registered platforms;

(iv) A person that is a delivery network company; except, that a delivery network company that meets the definition set forth in subdivision ( )(A) may elect, in a reasonable manner and duration prescribed by the department, to be deemed a marketplace facilitator pursuant to this chapter.

( ) "Marketplace seller" means a person who makes sales through any marketplace operated, owned, or controlled by a marketplace facilitator;

SECTION 7. Tennessee Code Annotated, Section 67-6-201, is amended by adding the following as a new, appropriately designated subdivision:

( ) Acts as a marketplace facilitator as defined in § 67-6-102;

SECTION 8. Tennessee Code Annotated, Section 67-6-501, is amended by adding the following as new subsections:

(f) When a marketplace seller uses a marketplace facilitator to facilitate sales of tangible personal property or any of the things or services taxable under this chapter, the marketplace facilitator is liable for the taxes imposed by this chapter on the sales price of the tangible personal property or the things or services taxable under this chapter regardless of whether the marketplace seller has a sales tax certificate of registration or

would have been required to collect sales or use taxes had the sale not been facilitated by the marketplace facilitator unless:

(1) The marketplace facilitator made or facilitated total sales to consumers in this state of five hundred thousand dollars ($500,000) or less during the previous twelve-month period;

(2) The marketplace facilitator demonstrates, to the satisfaction of the commissioner, that substantially all of the marketplace sellers for whom the marketplace facilitator facilitates sales are registered dealers under this section, in which case the commissioner is authorized to waive the requirements of this subsection (f). If a waiver is granted pursuant to this subdivision (f)(2), the taxes levied under this chapter shall be collectible from the marketplace sellers; or

(3) The marketplace facilitator and the marketplace seller contractually agree that the marketplace seller will collect and remit all applicable taxes under this chapter and the marketplace seller:

(A) Has annual gross sales in the United States of over one billion dollars ($1,000,000,000), including the gross sales of any related entities, and in the case of franchised entities, including the combined sales of all franchisees of a single franchisor;

(B) Provides evidence to the marketplace facilitator that it is registered in this state under § 67-6-601; and

(C) Notifies the commissioner in a manner prescribed by the commissioner that the marketplace seller will collect and remit all applicable taxes under this chapter on its sales through the marketplace facilitator and is liable for failure to collect or remit applicable taxes on its sales.

(g) A marketplace seller shall not be obligated to collect and remit or be liable for the taxes levied or imposed by this chapter on any retail sale for which a marketplace facilitator has collected and remitted such tax.

(h) When a marketplace seller uses a marketplace facilitator to facilitate sales of tangible personal property or the things or services taxable under this chapter, the marketplace facilitator is not liable for the fee imposed under § 7-88-117, regardless of whether the marketplace seller is located within the district.

SECTION 9. Tennessee Code Annotated, Title 67, Chapter 6, Part 5, is amended by adding the following as a new, appropriately designated section:

67-6-5__.

(a) A marketplace facilitator that collects and remits the taxes imposed by this chapter shall collect taxes on sales through its marketplace based upon the address to which the tangible personal property or things taxable under this chapter are shipped; provided, however, that taxes collected by the marketplace facilitator on services sold through its marketplace shall be collected as otherwise provided in this chapter.

(b) A marketplace facilitator shall report the sales and use taxes on sales through its marketplace separately from any sales and use taxes collected on sales made directly by the marketplace facilitator or affiliates of the marketplace facilitator.

(c) The commissioner may, in the commissioner's sole discretion, audit a marketplace facilitator for sales made by marketplace sellers and facilitated by the marketplace facilitator, except with respect to transactions that are subject to § 67-6-501(f)(1)-(3). The commissioner shall not audit or otherwise assess taxes against marketplace sellers for sales facilitated by a marketplace facilitator except to the extent the marketplace facilitator seeks relief as provided below or with respect to transactions that are subject to § 67-6-501(f)(1)-(3).

(d) A marketplace facilitator shall be relieved of liability for failure to collect and remit the correct amount of taxes to the extent that the error was due to incorrect or

insufficient information given to the marketplace facilitator by the marketplace seller if the marketplace facilitator demonstrates that it made a reasonable effort to obtain correct and sufficient information from the marketplace seller. This subsection (d) shall not apply if the marketplace facilitator and the marketplace seller are affiliates.

(e) No class action lawsuit may be brought against a marketplace facilitator in this state on behalf of purchasers relating to overcollection of sale or use taxes by the marketplace facilitator, regardless of whether that claim is characterized as a tax refund claim.

(f) Nothing in this section affects the obligation of any purchaser to remit sales or use taxes for any taxable transaction for which a marketplace facilitator or seller does not collect and remit sales and use taxes.

SECTION 10. Tennessee Code Annotated, Section 67-6-601, is amended by adding the following language as a new subsection:

(d) Only for sole purposes of this chapter, including registering with the department, a marketplace facilitator shall be considered the seller and retailer for each sale facilitated through its marketplace.

SECTION 11. This act shall take effect October 1, 2020, the public welfare requiring it.